

DEQ EXHIBIT B

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12 **MONTANA BOARD OF ENVIRONMENTAL REVIEW**

13 **IN THE MATTER OF:**

14 **APPEAL AMENDMENT AM4
15 WESTERN ENERGY COMPANY
16 ROSEBUD STRIP MINE AREA B,
17 PERMIT NO. C1984003B**

Case No.: BER 2016-03 SM

**AFFIDAVIT OF CHRIS YDE IN
SUPPORT OF DEQ'S BRIEF IN
OPPOSITION TO PETITIONERS'
MOTION FOR SUMMARY
JUDGMENT**

18 I, Chris Yde, swear (or affirm) under oath that:

19 1. I am of majority age;

20 2. I graduated from Montana State University in 1974 with a Bachelor's of Science in
21 Fish and Wildlife Management, and in 1977 with a Master's of Science in Fish and
22 Wildlife Management;

23 3. I worked as wildlife biologist for various organizations, including the Bureau of
24 Land Management (5 years), Montana Fish, Wildlife and Parks (9 years), Montana
25 Department of State Lands (3 years), and Montana Department of Environmental Quality
26 ("DEQ") (10 years);

27 4. I am currently the Section Supervisor for the Coal Section of the Coal and Opencut

Affidavit of Chris Yde

1 Mining Bureau ("Coal Program") at the DEQ and have been employed in that position for
2 nearly 11 years;

3 5. The Coal Program is responsible for permitting strip and underground coal mines
4 in Montana pursuant to its authority under The Montana Strip and Underground Mine
5 Reclamation Act ("MSUMRA") and the applicable administrative rules;
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7 6. As a part of my regular duties at DEQ, I oversee review of applications for permits,
8 including amendments and major revisions to permits for strip and underground mines in
9 Montana;

10 7. As Section Supervisor of the Coal Program, I was responsible for reviewing the
11 analysis of the hydrologists that worked on the preparation of the CHIA for the AM4
12 Amendment to Western Energy Company's Rosebud Coal Mine Area B ("AM4") permit
13 application;
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15 8. Angela McDannel, who is now retired from DEQ, served as the primary
16 groundwater hydrologist, and Emily Hinz was the primary surface water hydrologist that
17 worked on development of the AM4 CHIA;

18 9. Once an application for a permit is received, DEQ must first determine whether the
19 application is administratively complete, which means that the application "contains
20 information addressing each application requirement in § 82-4-222, MCA, and the rules
21 implementing that section and all information necessary to initiate processing and public
22 review." If the application is complete, DEQ must notify the applicant in writing and make
23 a determination whether to prepare an environmental impact statement ("EIS") under the
24 Montana Environmental Policy Act ("MEPA");
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26 10. Western Energy Company's application for the AM4 was submitted on June 15,
27

1 2009. DEQ notified Western Energy Company ("Intervenor") on August 7, 2009, that the
2 application was administratively complete. DEQ also notified Western Energy that
3 preparation of an EIS would not be necessary, as the proposed operation of AM4 was not
4 expected to significantly affect the quality of the human environment in Montana;

5 11. After determining that the application for AM4 was administratively complete,
6 DEQ was required to determine the "acceptability of the application," which means that the
7 "application is in compliance with all of the applicable requirements of [MSUMRA] and
8 the regulatory program pursuant to [MSUMRA];"

9 12. Between August 7, 2009 and July 8, 2015, DEQ sent eight deficiency notices to
10 Intervenor requesting additional technical information on the application. On July 8, 2015,
11 DEQ notified Intervenor that the application was acceptable and met all of the legal
12 requirements for DEQ to make a decision whether to grant or deny the permit application;

13 13. Pursuant to § 82-4-227(3), MCA, the burden is on the applicant to affirmatively
14 demonstrate to DEQ through the submission of a comprehensive permit application, which
15 includes the preparation of a probable hydrologic consequences ("PHC") assessment, that
16 the proposed operation of the mining operation has been designed to prevent material
17 damage to the hydrologic balance outside the permit area;

18 14. Prior to approving an application for a strip or underground mining permit or
19 major revision to a permit, DEQ must first assess the probable cumulative impact of all
20 anticipated mining in the area on the hydrologic balance, and make a determination that the
21 "proposed operation" of the mining operation has been designed to prevent material
22 damage to the hydrologic balance outside the permit area;

23 15. The Administrative Rules of Montana ("ARM") defines "Cumulative hydrologic
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1 impact area ("CIA")," as "the area, including, but not limited to, the permit and mine plan
2 area within which impacts to the hydrologic balance resulting from the proposed operation
3 may interact with the impacts of all previous, existing and anticipated mining on surface
4 and ground water systems" (See ARM 17.24.301(32));

5 16. For purposes of the CIA, ARM 17.24.301(32) states that "[a]nticipated mining
6 includes, at a minimum, the entire projected lives through bond release of all operations
7 with pending applications for which there is actual mine-development information
8 available";

9 17. Based on the plain language of § 82-4-227(3)(a), MCA, and ARM 17.24.301(32),
10 DEQ limited its cumulative hydrologic impact assessment ("CHIA") for AM4 to those
11 areas within which impacts to the hydrologic balance resulting from the proposed operation
12 in AM4 may interact with the impacts of all previous, existing and anticipated mining,
13 including all pending permit applications for which actual mine-development information
14 was available at the time the CHIA was being prepared;

15 18. DEQ had multiple communications with Intervenor concerning the scope of the
16 PHC, including DEQ's interpretation of which areas of the Rosebud Mine needed to be
17 included in the PHC for AM4;

18 19. DEQ advised Intervenor that it was not necessary to include the proposed
19 operations in Area F or the additional minor revisions in Area A in the PHC for AM4;

20 20. With respect to Area A MR62 and MR66, these applications were both minor
21 revisions, which by definition must not result in changes that affect the hydrologic balance.
22 (See ARM 17.24.301(66) and (72)) Therefore, they were not included in the CHIA;

23 21. With respect to Area B-Ext. (See Petitioners' Br., Ex. 26), this area was amended
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1 to the Area B permit on January 31, 1995 (Area B, AM1). A map of the Area B-Ext. that
2 was approved in 1995 is attached hereto as Ex. B1. The written findings for this decision
3 included an update to the Area B CHIA (See Petitioners' Br., Ex. 15). Therefore, the
4 approved mining within this area was included in the hydrologic impact assessment
5 contained in both the PHC and CHIA for AM4;
6

7 22. An application for a minor revision (MR76) to the Area B permit was submitted to
8 DEQ on January 25, 2016. Since the written findings for the AM4 permit application,
9 which includes the CHIA, were published on December 4, 2015, the MR76 application was
10 not pending before DEQ, and was not included in the CHIA for AM4;
11

12 23. Intervenor submitted an application to DEQ for a new surface mine permit for
13 Area F (Permit ID Number C2011003F) on November 2, 2011. On August 1, 2012, DEQ
14 determined the application was complete and began its review of the application for
15 acceptability. The permit application had been through three deficiency reviews by DEQ
16 and still was not determined to be acceptable at the time the AM4 CHIA was developed;
17

18 24. Nevertheless, the anticipated mining in Area F did not need to be included in the
19 PHC for AM4 because there was no hydrologic connection between Area F and Area B or
20 AM4. Therefore, there would be no interaction between impacts from AM4 and impacts
21 from Area F on the hydrologic balance in the area;
22

23 25. Impacts from Area F will occur primarily in the West Fork Armells Creek
24 ("WFAC") drainage, while impacts from AM4 will occur only in the East Fork Armells
25 Creek ("EFAC") drainage. No impacts from Area F will occur in the EFAC drainage.
26 Impacts from all of Area B are limited to the EFAC, with the exception of impacts from a
27 very small portion of Area B-Ext that crosses the surface water divide into Lee Coulee,

1 which drains into the Rosebud Creek drainage;

2 26. Because the proposed operations in AM4 and the proposed operations in
3 Area F affect different hydrologic units or drainages, it is more appropriate to address the
4 cumulative impacts of the proposed operations in Area F in a separate CHIA for Area F, if
5 and when the permit application is determined by DEQ to be acceptable;

6 27. Additionally, even though the application for Area F was pending prior to DEQ
7 issuing its written findings for AM4, the mine-plan for Area-F continued to evolve, and
8 there was not sufficient data available at the time for DEQ to perform an adequate analysis
9 of the hydrologic impacts from Area F in the AM4 CHIA;
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11 28. DEQ issued its written findings for AM4 on December 4, 2015, thereby granting
12 Intervenor's AM4 permit application. Based on the information provided by Intervenor in
13 the permit application, and based on DEQ's assessment of the probable hydrologic
14 consequences for all anticipated mining on the hydrologic balance, DEQ determined that
15 the proposed operations in AM4 would not cause material damage outside the permit area.
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17 FURTHER AFFIANT SAYETH NOT.

18 DATED this 20th day of July, 2016.
19

20 MONTANA DEPARTMENT OF
21 ENVIRONMENTAL QUALITY

22 By: 

23 CHRIS YDE

24 DEQ Coal Section Supervisor

25 Subscribed and sworn to (or affirmed) before me this 20 day of July, 2016, by CHRIS
26 YDE.
27

Affidavit of Chris Yde

(SEAL)

NAME
NOTARY PUBLIC for the State of Montana
Residing in Lewis and Clark County.
My Commission Expires: May 19, 2016

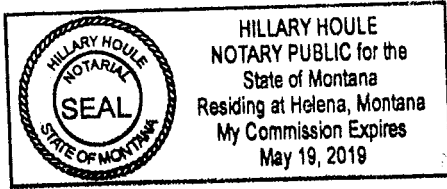


Exhibit B-1

Area B-Extension Mine Plan